

112TH CONGRESS
1ST SESSION

S. _____

To amend the Internal Revenue Code of 1986 to allow a temporary dividends received deduction for dividends received from a controlled foreign corporation.

IN THE SENATE OF THE UNITED STATES

Mrs. HAGAN (for herself and Mr. McCain) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to allow a temporary dividends received deduction for dividends received from a controlled foreign corporation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreign Earnings Re-
5 investment Act”.

6 **SEC. 2. ALLOWANCE OF TEMPORARY DIVIDENDS RECEIVED**

7 **DEDUCTION FOR DIVIDENDS RECEIVED**

8 **FROM A CONTROLLED FOREIGN CORPORA-**

9 **TION.**

10 (a) APPLICABILITY OF PROVISION.—

1 (1) IN GENERAL.—Subsection (f) of section 965
2 is amended to read as follows:

3 “(f) ELECTION; ELECTION YEAR.—

4 “(1) IN GENERAL.—The taxpayer may elect to
5 apply this section to—

6 “(A) the taxpayer’s last taxable year which
7 begins before the date of the enactment of the
8 Foreign Earnings Reinvestment Act, or

9 “(B) the taxpayer’s first taxable year
10 which begins during the 1-year period beginning
11 on such date.

12 Such election may be made for a taxable year only
13 if made on or before the due date (including exten-
14 sions) for filing the return of tax for such taxable
15 year.

16 “(C) ELECTION YEAR.—For purposes of
17 this section, the term ‘election year’ means the
18 taxable year—

19 “(i) which begins after the date that
20 is one year before the date of the enact-
21 ment of the Foreign Earnings Reinvest-
22 ment Act, and

23 “(ii) to which the taxpayer elects
24 under paragraph (1) to apply this sec-
25 tion.”.

1 (2) CONFORMING AMENDMENTS.—

2 (A) EXTRAORDINARY DIVIDENDS.—Section
3 965(b)(2) of such Code is amended—

4 (i) by striking “June 30, 2003” and
5 inserting “September 30, 2011”, and

6 (ii) by adding at the end the following
7 new sentence: “The amounts described in
8 clauses (i), (ii), and (iii) shall not include
9 any amounts which were taken into ac-
10 count in determining the deduction under
11 subsection (a) for any prior taxable year.”.

12 (B) DETERMINATIONS RELATING TO RE-
13 LATED PARTY INDEBTEDNESS.—Section
14 965(b)(3)(B) of such Code is amended by strik-
15 ing “October 3, 2004” and inserting “Sep-
16 tember 30, 2011”.

17 (C) DETERMINATIONS RELATING TO BASE
18 PERIOD.—Section 965(c)(2) of such Code is
19 amended by striking “June 30, 2003” and in-
20 serting “September 30, 2011”.

21 (b) DEDUCTION INCLUDES CURRENT AND ACCUMU-
22 LATED FOREIGN EARNINGS.—

23 (1) IN GENERAL.—Paragraph (1) of section
24 965(b) of the Internal Revenue Code of 1986 is
25 amended to read as follows:

1 “(1) IN GENERAL.—The amount of dividends
2 taken into account under subsection (a) shall not ex-
3 ceed the sum of the current and accumulated earn-
4 ings and profits described in section 959(c)(3) for
5 the year a deduction is claimed under subsection (a),
6 without diminution by reason of any distributions
7 made during the election year, for all controlled for-
8 eign corporations of the United States shareholder.”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) Section 965(c) of such Code, as
11 amended by subsection (a), is amended by
12 striking paragraph (1) and by redesignating
13 paragraphs (2), (3), (4), and (5), as paragraphs
14 (1), (2), (3), and (4), respectively.

15 (B) Paragraph (4) of section 965(c) of
16 such Code, as redesignated by subparagraph
17 (A), is amended to read as follows:

18 “(4) CONTROLLED GROUPS.—All United States
19 shareholders which are members of an affiliated
20 group filing a consolidated return under section
21 1501 shall be treated as one United States share-
22 holder.”.

23 (c) AMOUNT OF DEDUCTION.—

24 (1) IN GENERAL.—Paragraph (1) of section
25 965(a) of the Internal Revenue Code of 1986 is

1 “(B) 10 percent of the qualified payroll of
2 the taxpayer for calendar year 2010.”

3 “(3) QUALIFIED PAYROLL.—For purposes of
4 this paragraph:

5 “(A) IN GENERAL.—The term ‘qualified
6 payroll’ means, with respect to a taxpayer for
7 any calendar year, the aggregate wages (as de-
8 fined in section 3121(a)) paid by the corpora-
9 tion during such calendar year.

10 “(B) EXCEPTION FOR CHANGES IN OWN-
11 ERSHIP OF TRADES OR BUSINESSES.—

12 “(i) ACQUISITIONS.—If, after Decem-
13 ber 31, 2009, and before the close of the
14 first taxable year following the election
15 year, a taxpayer acquires the trade or busi-
16 ness of a predecessor, then the qualified
17 payroll of such taxpayer for any calendar
18 year shall be increased by so much of the
19 qualified payroll of the predecessor for
20 such calendar year as was attributable to
21 the trade or business acquired by the tax-
22 payer.

23 “(ii) DISPOSITIONS.—If, after Decem-
24 ber 31, 2009, and before the close of the
25 first taxable year following the election

1 year, a taxpayer disposes of a trade or
2 business, then—

3 “(I) the qualified payroll of such
4 taxpayer for calendar year 2010 shall
5 be decreased by the amount of wages
6 for such calendar year as were attrib-
7 utable to the trade or business which
8 was disposed of by the taxpayer, and

9 “(II) if the disposition occurs
10 after the beginning of the first taxable
11 year following the election year, the
12 qualified payroll of such taxpayer for
13 the calendar year which begins with
14 or within such taxable year shall be
15 decreased by the amount of wages for
16 such calendar year as were attrib-
17 utable to the trade or business which
18 was disposed of by the taxpayer.

19 “(C) SPECIAL RULE.—For purposes of de-
20 termining qualified payroll for any calendar
21 year after calendar year 2011, such term shall
22 not include wages paid to any individual if such
23 individual received compensation from the tax-
24 payer for services performed—

1 “(i) after the date of the enactment of
2 this paragraph, and

3 “(ii) at a time when such individual
4 was not an employee of the taxpayer.”.

5 (3) REDUCTION FOR FAILURE TO MAINTAIN
6 EMPLOYMENT LEVELS.—Paragraph (4) of section
7 965(b) of such Code (relating to limitations) is
8 amended to read as follows:

9 “(4) REDUCTION IN BENEFITS FOR FAILURE
10 TO MAINTAIN EMPLOYMENT LEVELS.—

11 “(A) IN GENERAL.—If, during the period
12 consisting of the calendar month in which the
13 taxpayer first receives a distribution described
14 in subsection (a)(1) and the succeeding 23 cal-
15 endar months, the taxpayer does not maintain
16 an average employment level at least equal to
17 the taxpayer’s prior average employment, an
18 additional amount equal to \$75,000 multiplied
19 by the number of employees by which the tax-
20 payer’s average employment level during such
21 period falls below the prior average employment
22 (but not exceeding the aggregate amount al-
23 lowed as a deduction pursuant to subsection
24 (a)(1)) shall be taken into income by the tax-

1 payer during the taxable year that includes the
2 final day of such period.

3 “(B) AVERAGE EMPLOYMENT LEVEL.—
4 For purposes of this paragraph, the taxpayer’s
5 average employment level for a period shall be
6 the average number of full-time United States
7 employees of the taxpayer, measured at the end
8 of each month during the period.

9 “(C) PRIOR AVERAGE EMPLOYMENT.—For
10 purposes of this paragraph, the taxpayer’s
11 ‘prior average employment’ shall be the average
12 number of full-time United States employees of
13 the taxpayer during the period consisting of the
14 24 calendar months immediately preceding the
15 calendar month in which the taxpayer first re-
16 ceives a distribution described in subsection
17 (a)(1).

18 “(D) FULL-TIME UNITED STATES EM-
19 PLOYEE.—For purposes of this paragraph—

20 “(i) IN GENERAL.—The term ‘full-
21 time United States employee’ means an in-
22 dividual who provides services in the
23 United States as a full-time employee,
24 based on the employer’s standards and
25 practices; except that regardless of the em-

1 employer's classification of the employee, an
2 employee whose normal schedule is 40
3 hours or more per week is considered a
4 full-time employee.

5 “(ii) EXCEPTION FOR CHANGES IN
6 OWNERSHIP OF TRADES OR BUSINESSES.—
7 Such term does not include—

8 “(I) any individual who was an
9 employee, on the date of acquisition,
10 of any trade or business acquired by
11 the taxpayer during the 24-month pe-
12 riod referred to in subparagraph (A),
13 and

14 “(II) any individual who was an
15 employee of any trade or business dis-
16 posed of by the taxpayer during the
17 24-month period referred to in sub-
18 paragraph (A) or the 24-month period
19 referred to in subparagraph (C).

20 “(E) AGGREGATION RULES.—In deter-
21 mining the taxpayer's average employment level
22 and prior average employment, all domestic
23 members of a controlled group shall be treated
24 as a single taxpayer.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after the
3 date of the enactment of this Act.